FILED
JUL 15 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 345

AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1338; HENRY PYLE, G. W. BRIDGES, and CHARLES WORK (individually and as representatives of a class of beneficiaries of a retirement plan); and W. E. ARMSTRONG and H. H. BENNETT (individually and as representatives of a class of beneficiaries of a retirement plan), *Petitioners*

v.

THE DALLAS PUBLIC TRANSIT BOARD; THE CITY OF DALLAS; THE DALLAS TRANSIT COMPANY and THE MERCANTILE NATIONAL BANK OF DALLAS, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

EARLE W. PUTNAM
5025 Wisconsin Avenue, N. W.
Washington, D. C. 20016

L. N. D. WELLS, JR.
G. WILLIAM BAAB
1601 National Bankers Life Building
Dallas, Texas 75201

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitution—Statutes Involved	3
Statement of the Case	3
A. Proceedings in the Trial Court	3
B. How the Federal Questions Were Raised and Treated	4
C. The Facts	6
D. The Decision of the Texas Court of Civil Appeals	8
Reasons for Granting the Writ	11
Conclusion	17
Appendix A	1a
Appendix B	25a
Appendix C	26a
Appendix D	31a
Appendix E	61a
Appendix F	79a
Appendix G	81a

CITATIONS

CASES:

American Federation etc. v. Woodward, 406 F. 2d 137 (C.A. 8)	13
Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D. N.C.)	13
City of Cleveland v. Division 268, Amalgamated Association, 90 N.E. 2d 711 (Ohio Ct. Com. Pls.)	12
City of Detroit v. Div. 26 of Amalgamated Association, 332 Mich. 237, 51 N.W. 2d	12

Page

Dade County v. Amalgamated Association, 157 So. 2d 176 (Fla. App.), appeal dismissed, 166 So. 2d 149 (Fla. S. Ct.), cert. den. 377 U.S. 971 12
Glidwell v. Hughey, 314 S.W. 2d 749 (Mo. S. Ct.) 12
Gulf, Colorado & Santa Fe Ry. Co. v. Ellis, 165 U.S. 150, 155 17
Indianapolis Education Ass'n v. Lewallen, D.C.S.D. Ind., Civil Action No. 1 P 69-c-252, prelim. inj. issued June 19, 1969, W. E. Steckler, J. 13
Lewis v. Benedict Coal Corp., 361 U.S. 459, 468 11
Martin v. Los Angeles Metropolitan Transit Authority, 238 C.A. 2d 183, 47 Cal. Reptr. 653 12
McLaughlin v. Tilendis, 398 F. 2d 287 (C.A. 7) 13
NAACP v. Button, 371 U.S. 415 ..... 13, 16
Ohnstad v. Tacoma, 64 Wash. 2d 904, 395 P. 2d 97 12
Railroad Trainmen v. Virginia Bar, 371 U.S. 1 ..... 11, 13
Shelton v. Tucker, 364 U.S. 479 16
State ex rel. Missey v. City of Cabool, 70 LRRM 3394 (Mo. S. Ct., decided April 14, 1969) 13
Teamsters v. Lucas Flour Co., 369 U.S. 95 15
Thomas v. Collins, 323 U.S. 516 13
U. S. v. Robel, 389 U.S. 258, 263 ..... 13, 16
United Mine Workers v. Illinois Bar Association, 389 U.S. 217 ..... 11, 13, 14

STATUTES:

28 U.S.C. § 1257(3) 2

First Amendment to the United States Constitution 4, 5, 6, 9, 13, 14

Fourteenth Amendment to the United States Constitution 4, 5, 6, 9, 12-13, 15, 16, 17

Vernon's Annotated Texas Statutes, Article 5154(c) 3, 4, 5, 7, 8, 9, 15, 16, 17

MISCELLANEOUS:

The American City Magazine, April 1967 issue, "The American City 1967 Nationwide Inventory of Governmental Mass Transit Facilities, Market Report #SP-1084" 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ....

AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1338; HENRY PYLE, G. W. BRIDGES, and CHARLES WORK (individually and as representatives of a class of beneficiaries of a retirement plan); and W. E. ARMSTRONG and H. H. BENNETT (individually and as representatives of a class of beneficiaries of a retirement plan), *Petitioners*

v.

THE DALLAS PUBLIC TRANSIT BOARD; THE CITY OF DALLAS; THE DALLAS TRANSIT COMPANY and THE MERCANTILE NATIONAL BANK OF DALLAS, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

Petitioners, Amalgamated Transit Union Local Division 1338, and individual members thereof who are representatives of classes of beneficiaries under a pension plan,[1] pray that a writ of certiorari issue to re-

[1] Henry Pyle, G. W. Bridges and Charles Work (individually and as representatives of a class of beneficiaries of a pension plan); and W. E. Armstrong and H. H. Bennett (individually and as representatives of a class of beneficiaries of a pension plan).

view the judgment of the Texas Court of Civil Appeals for the Fifth Supreme Judicial District, at Dallas, delivered May 31, 1968.

OPINIONS BELOW

The opinion of the Texas Court of Civil Appeals for the Fifth Supreme Judicial District appears in Appendix A hereto, pp. 1a-24a, and is reported in 430 S.W. 2d 107. The judgment of the trial court appears in Appendix C hereto, pp. 26a-30a, and is unreported. No opinion was rendered by the Texas Supreme Court.

JURISDICTION

The decision of the Texas Court of Civil Appeals for the Fifth Supreme Judicial District was rendered on May 31, 1968, and rehearing was denied June 28, 1968. Timely application for writ of error to the Supreme Court of Texas was refused without opinion, no reversible error, on February 26, 1969 (Appendix B, *infra,* p. 25a) Timely motion for rehearing to that court was similarly denied without opinion, on April 16, 1969 (Appendix G, *infra,* p. 81a), making final the judgment of the Court of Civil Appeals. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

Where a public employer has assumed a private pension Plan which provides for bilateral administration by employer- and union-designees, and amendment of the Plan only upon agreement of the employer and the union, does a State law, as applied to deny to those under the Plan the right to continuing representation by their union, deprive such employees of:

A. Freedom of Association, Assembly and Petition guaranteed against State encroachment by the Fourteenth and First Amendments to the United States Constitution;

B. Equal Protection of the Laws guaranteed by the Fourteenth Amendment?

CONSTITUTION—STATUTE INVOLVED

The Constitutional provisions involved are the First Amendment and the Fourteenth Amendment, Section 1, set forth in Appendix F, *infra,* (pp. 79a-81a). The Statute involved, which governs the organizational rights of public employees in Texas, is Article 5154(c), *Vernon's Annotated Texas Statutes,* as amended, also printed in Appendix F hereto (*ibid.*).

STATEMENT OF THE CASE

A. Proceedings in the Trial Court.

This action began as one for declaratory judgment wherein Respondent Mercantile National Bank at Dallas (herein called "Bank"), as trustee of a bilateral "Trusteed Retirement Plan For Union Employees of Dallas Transit Company", upon assumption of the Plan by the Dallas Public Transit System, sought instructions as to the administration of the Trust and reformation of the Trust instruments (App. A, p. 7a; S. F. 348[2]). The Respondents, City of Dallas (herein called "City"), and Dallas Public Transit Board,

[2] S.F. refers to "Statement of Facts", Vol. I of which contains all proceedings and testimony and Vol. II the Exhibits in the trial court.